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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RAFAEL U. VILLEGAS,

Defendant and Appellant.

B172942

(Los Angeles County  
Super. Ct. No. PA045198)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Robert J. Schuit, Judge. Affirmed.

Gerald Clausen, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lawrence M.  
Daniels and Suzann E. Papagoda, Deputy Attorneys General, for Plaintiff and  
Respondent.

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Rafael U. Villegas was convicted of one count of evading an officer with willful disregard for the safety of others (Veh. Code, § 2800.2) and one count of possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)), with true findings on allegations that he had suffered one prior strike and served one prior prison term.<sup>1</sup> Villegas was sentenced to state prison for a term of seven years, four months. We reject his claim of instructional error and affirm the judgment.

### **FACTS**

Villegas was driving a car when Los Angeles Police Officer Andrew Pedersen and his partner turned on their siren and lights to signal Villegas to stop. Villegas pulled over and stopped, drove about 25 yards, and pulled over and stopped. The officers pulled up behind him. Officer Pedersen walked over to Villegas's car and told him to get out. Villegas failed to comply, and remained in the car even after the officers repeated their demands, in English and Spanish, over a loudspeaker. The officers called for backup, and six or seven cars and a helicopter responded. After about five minutes, three passengers got out of Villegas's car. Villegas leaned over, locked the passenger door, and remained in the car.

In an effort to avoid a high speed chase, the officers fired a "beanbag device" at Villegas's car and shattered a window. Officer Pedersen then tried to open the driver's door but it wouldn't open (because it was broken), and Villegas started the engine. Another officer shot a tazer at Villegas and hit him in

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<sup>1</sup> Subsequent section references are to the Vehicle Code.

the left arm but Officer Pederson was also hit and the officers backed away from the car.

Villegas drove off, followed by six police cars. During the course of the ensuing chase, Villegas cut off on-coming cars, ran stop signs, ran a red light, forced other vehicles to swerve to avoid collisions, then ultimately stopped, got out of his car, then tried to get back in but was hit by a beanbag device. Villegas surrendered and was arrested. (This is the only count relevant to this appeal.)

### **DISCUSSION**

The jury was instructed according to CALJIC No. 12.85, which includes the following language from section 2800.2:

"(a) If a person flees or attempts to elude a pursuing peace officer . . . and the pursued vehicle is driven with a willful or wanton disregard for the safety of persons or property, the person driving the vehicle [is guilty of a wobbler]  
. . . .

"(b) For purposes of this section, a willful or wanton disregard for the safety of persons or property includes, but is not limited to, driving while fleeing or attempting to elude a pursuing peace officer during which time either three or more violations that are assigned a traffic violation point count under Section 12810 occur, or damage to property occurs."

Villegas contends this instruction impermissibly relieved the prosecution of its burden of proof beyond a reasonable doubt by creating a presumption that the conduct is "willful or wanton" when the required number of traffic violations

are committed. For the reasons stated in *People v. Pinkston* (2003) 112 Cal.App.4th 387, and *People v. Williams* (2004) 116 Cal.App.4th 1114 (review granted June 9, 2004, S123910), we disagree. Neither the statute nor the instruction required the jury to presume anything. To the contrary, the instruction, like the statute, simply defines "willful and wanton" and requires proof beyond a reasonable doubt of property damage or that the other violations occurred. Since the testimony at trial established that Villegas made an illegal left turn in violation of section 22100, subdivision (b), twice failed to stop at a four-way intersection in violation of section 22450, subdivision (a), and ran a red light in violation of section 21453, subdivision (a), and since the jury wasn't told to presume anything, Villegas has no cause for complaint.

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

MALLANO, Acting P.J.

SUZUKAWA, J.\*

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\*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.